

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JOHN D. NELLIST,

Petitioner,

v.

WARDEN,

Respondent.

CAUSE NO. 3:22-CV-1042-JD-MGG

OPINION AND ORDER

John D. Nellist, a prisoner without a lawyer, filed a habeas corpus petition challenging the disciplinary decision (MCF-22-8-190) at the Miami Correctional Facility in which a disciplinary hearing officer (DHO) found him guilty of threatening in violation of Indiana Department of Correction Offense 213. According to the petition, he did not lose earned credit time or receive a demotion in credit class as a result of this disciplinary hearing. Pursuant to Section 2254 Habeas Corpus Rule 4, the court must dismiss the petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

“[A] habeas corpus petition must attack the fact or duration of one’s sentence; if it does not, it does not state a proper basis for relief under § 2254.” *Washington v. Smith*, 564 F.3d 1350, 1351 (7th Cir. 2009). Nellist did not lose earned credit time, receive a demotion in credit class, or receive any other sanction as a result of the disciplinary hearing that increased the duration of his sentence. Because Nellist’s claims do not relate to the fact or duration of his sentence, the court cannot grant him habeas relief.

If Nellist wants to appeal this decision, he does not need a certificate of appealability because he is challenging a prison disciplinary proceeding. *See Evans v. Circuit Court*, 569 F.3d 665, 666 (7th Cir. 2009). However, he may not proceed in forma pauperis on appeal because the court finds pursuant to 28 U.S.C. § 1915(a)(3) that an appeal in this case could not be taken in good faith.

For these reasons, the court:

- (1) DENIES the habeas corpus petition (ECF 1);
- (2) DIRECTS the clerk to enter judgment and close this case; and
- (3) DENIES John D. Nellist leave to proceed in forma pauperis on appeal.

SO ORDERED on January 3, 2023

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT